IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

MFA.No. 646 of 1994()

OS(ARB).125/1985 of SUB COURT, PATHANAMTHITTA
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APPELLANT/PLAINTIFF:

G.VAMADEVAN, AGED 50 YEARS, SON OF LATE GANGADHARA PANICKER, SHEEJA NIVAS, VALAPPIL VILLAGE, NEYYATTINKARA TALUK.

BY ADV. SRI.K.L.VARGHESE
SMT.SANTHA VARGHESE

RESPONDENTS/DEFENDANTS:
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1. THE TRAVANCORE DEVASWOM BOARD, TRIVANDRUM-3, REPRESENTED BY ITS SECRETARY.

2. THE PROJECT CHIEF ENGINEER, TRAVANCORE DEVASWOM BOARD, TRIVANDRUM-3.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.S.V.BALAKRISHNA IYER
SRI.V.KRISHNA MENON
SRI.P.B.KRISHNAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.PADMANABHAN NAIR, JJ.

M.F.A.NO.646 OF 1994

Dated 27th November, 2006

JUDGMENT

Koshy,J.

Appellant was the plaintiff in O.S.(Arb)No.125 of 1985 on the file of the Sub Court, Pathanamthitta. The suit was filed by him under section 20 of the Arbitration Act praying for appointment of an arbitrator as arbitration did not take place despite his request as provided under Clause 12 of Ext.A1 agreement. Clause 12 reads as follows:

> "In case of any disputes between the contractor and the departmental authorities, the Travancore Devaswom Board will be the arbitrator in all matters pertaining to this contract and their decision shall be final and binding and no appeal shall lie against such decisions".

The appellant entered into a contract with the Devaswom Board for construction of a new guest house at Sabarimala. The contract was for constructing the above for a total amount of Rs.9,08,670/= within six months. Since the above contract was terminated, the appellant filed a representation. The Board considered the matter and held that the termination was correct. The arbitration request was rejected mainly because the Arbitrator is the Board and Board's decision was

communicated by the Secretary. We have gone through the communication given by the Secretary which shows that Board has rejected the appellant's representation against termination of the contract, but, it did not contain any mention about the amount, if any, due for the work already done by the appellant as well as return of security deposit. In the above circumstances, judgment of the court below is set aside. The Board, as mentioned in Clause 12 of Ext.A1 agreement, shall decide the correctness of the claim and arbitrate the matter as per the agreement according to law.

The appeal is allowed.

J.B.KOSHY
JUDGE

K.PADMANABHAN NAIR
JUDGE

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